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No. 391

United States Court of Appeals

FOR THE SECOND CIRCUIT

R. S. DASS BADHWAR and R. B. LACHHMANDASS MOHANLAL & SONS, LTD., composing the co-partnership doing business under the firm name and style of MULKRAJ BROTHERS and BADHWAR,

Plaintiffs-Appellants,

against

THE COLORADO FUEL AND IRON CORPORATION, ISBRANDTSEN COMPANY, INC.,

Defendants-Appellees,

and

AMERICAN-HAWAIIAN STEAMSHIP COMPANY,

Defendant-Appellee-Appellant.

(Civil Action No. 62-10)

APPENDIX TO BRIEF OF DEFENDANT-APPELLEE, THE COLORADO FUEL AND IRON CORPORATION

On Appeal from the United States District Court for the Southern District of New York

Kelley, Drye, Newhall & Maginnes,
Attorneys for Defendant-Appellee,
The Colorado Fuel and Iron Corporation,
70 Broadway,
New York, N. Y.

Francis S. Bensel,
W. Frederick Knecht,
of Counsel.

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Answer.

[523]

Defendant, The Colorado Fuel and Iron Corporation, by Rathbone, Perry, Kelley & Drye, its attorneys, for its answer to the First, Second, Third and Fifth alleged causes of action set forth in the complaint, alleges as follows:

First Defense

I. It is without any knowledge or information sufficient to form a belief as to the truth of the allegations contained in subparagraphs (a), (b), (d), (e) and (f) of paragraph 1 of the complaint.

II. It denies each and every allegation contained in paragraph 2 of the complaint, except that it admits that during the month of August, 1948, an agreement in writing was entered into between plaintiffs and this defendant in and by which this defendant agreed to sell, and plaintiffs [524] agreed to purchase, 2000 long tons of caustic soda solid, 76% alkalinity N. Y. & L. Test, packed in steel drums, at a price of 9½ cents per pound, C.I.F. Bombay, India, payable by plaintiffs in U. S. dollars by irrevocable letter of credit in this defendant's favor, and except that it further admits that said agreement, as subsequently modified by the parties thereto, required this defendant to make shipment to plaintiffs at Bombay, India, of a portion of said 2000 long tons of caustic soda from a port in the Gulf of Mexico, U.S.A., not later than September 22, 1948, and of a further portion thereof from a port in the Gulf of Mexico, U.S.A., not later than October 10, 1948.

Answer.

III. It denies the allegations contained in paragraph 3 of the complaint in that plaintiffs, on October 9, 1948, cancelled the said agreement referred to in paragraph II hereof to the extent that the same provided for the sale by this defendant, and the purchase by plaintiffs, of 508.58 long tons of said caustic soda.

IV. It denies each and every allegation contained in paragraphs 4 and 5 of the complaint.

V. It is without any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the complaint, except that it denies that the said agreement between plaintiffs and this defendant contemplated or provided any time, reasonable or otherwise, for the arrival of said caustic soda at Bombay, India.

VI. It denies each and every allegation contained [525] in paragraph 7 of the complaint, except that it admits that on or about September 7, 1948, this defendant drew and presented its sight drafts under letters of credit opened in its favor for the account of plaintiffs and for the account of plaintiff, R. S. Dass Badhwar, respectively, and subsequently received in payment thereof the sum of $317,375.53.

VII. It denies each and every allegation contained in paragraph 8 of the complaint.

VIII. It denies each and every allegation contained in paragraph 10 of the complaint, except that it admits that on or about August 18, 1948, plaintiffs caused an irrevocable letter of credit, dated August 19, 1948, to be opened by The National City Bank of New York in favor of one W. A. Bartle for the sum of $239,000.00, and that plaintiffs, in order to comply with the terms of the said agreement referred to in paragraph II hereof, there-

after and on or about August 25, 1948, caused said letter of credit to be amended by The National City Bank of New York by changing the beneficiary thereof from said W. A. Bartle to this defendant.

IX. It denies each and every allegation contained in paragraph 11 of the complaint, except that it admits that the said letter of credit referred to in paragraph VIII hereof, as amended, provided that sight drafts drawn thereunder would be honored if presented at the office of The National City Bank of New York, 55 Wall Street, New York, N. Y., on or before October 25, 1948, and if accompanied, among other things, by a full set or sets of on [526] board ocean bills of lading, dated at the latest October 10, 1948, evidencing the shipment by this defendant of caustic soda from U. S. ports to Bombay in one or more shipments.

X. It denies each and every allegation contained in paragraph 12 of the complaint, except that it admits that, in purported compliance with the said agreement referred to in paragraph II hereof, plaintiff R. S. Dass Badhwar, on or about August 25, 1948, caused an irrevocable letter of credit, dated August 26, 1948, to be opened by The National City Bank of New York in favor of this defendant for the sum of $186,600.00

XI. It denies each and every allegation contained in paragraph 13 of the complaint, except that it admits that the said letter of credit referred to in paragraph X hereof provided that sight drafts drawn thereunder would be honored if presented at the office of The National City Bank of New York, 55 Wall Street, New York, N. Y., on or before October 7, 1948, and if accompanied, among other things, by a full set or sets of on board ocean bills of lading, dated at the latest September 22, 1948, evidencing the shipment by this defendant of caustic soda from U. S. ports to Bombay in one or more shipments.

Answer.

XII. It is without any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the complaint, except that it admits, upon information and belief, that at all the times mentioned in the complaint defendant, Isbrandtsen Company, Inc. was, and is, engaged in business as a common carrier for hire.

[887] XIII. It is without any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the complaint.

XIV. It is without any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the complaint, except that it denies each and every allegation therein contained insofar as the same refers or relates to this defendant, and except that it admits that the S. S. HAWAIIAN arrived at Westwego Wharf No. 3, New Orleans, Louisiana, on August 31, 1948, at approximately 12:30 P. M., and that loading on board said vessel of caustic soda destined for plaintiffs at Bombay, India, was thereafter commenced.

XV. It is without any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 17, 18 and 19 of the complaint.

XVI. It is without any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the complaint, except that it denies each and every allegation therein contained insofar as the same refers or relates to this defendant.

XVII. It denies each and every allegation contained in paragraphs 21 and 22 of the complaint.

XVIII. It denies each and every allegation contained in paragraphs 23 and 24 of the complaint, except that it admits that the loading of caustic soda destined for

plaintiffs was continued after 10:30 A. M. on September 2, 1948.

[528] XIX. It is without any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the complaint.

XX. It denies each and every allegation contained in paragraph 26 of the complaint, except that it admits that on September 3, 1948, defendant, Isbrandtsen Company, Inc., issued to this defendant full sets of on board ocean bills of lading for a total of 4,799 drums of caustic soda, 76% solid (N. Y. & L.), showing freight prepaid and made out to the order of The National City Bank of New York, New York City, N. Y., or assigns, as consignee, and that this defendant thereafter and on or about September 7, 1948, utilized said bills of lading to obtain payment from The National City Bank of New York of the sum of $317,375.53 under the said letters of credit referred to in paragraphs VIII and X hereof, and except that it further admits that this defendant paid defendant, Isbrandtsen Company, Inc., freightage to Bombay on said caustic soda.

XXI. It is without any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the complaint, except that it denies each and every allegation therein contained insofar as the same refers or relates to this defendant, and except that it further denies that any strike on the part of officers and crew of the vessel therein referred to was in existence, or that said vessel was without operating personnel, at the time any caustic soda destined for plaintiffs was in the course of being loaded on board said vessel.

[529] XXII. It denies each and every allegation contained in paragraph 28 of the complaint, except that it

is without any knowledge or information sufficient to form a belief as to whether or not the said vessel therein referred to became and remained immobilized at New Orleans until December 9, 1948, as to when the alleged strikes therein mentioned were terminated, as to whether or not the said vessel therein referred remained at New Orleans an additional period of time subsequent to December 9, 1948 and put in at one or more other ports or places for the purposes and reasons therein alleged, and as to when the said vessel therein referred to reached Bombay, India.

XXIII. It denies each and every allegation contained in paragraph 29 of the complaint.

XXIV. It is without any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the complaint, except that it denies that any caustic soda destined for plaintiffs was loaded aboard the vessel therein referred to while said vessel was strikebound or while the same was immobilized and unable to be used as a carrier of said caustic soda under normal conditions, and except that it further denies that defendant, Isbrandtsen Company, Inc., carelessly, negligently or wantonly issued any on board bill or bills of lading to this defendant which enabled this defendant to draw upon the letters of credit purportedly described therein and referred to in paragraphs VIII and X hereof and to obtain from the avails thereof said sum of $317,375.53.

XXV. It denies each and every allegation contained in paragraph 31 of the complaint.

[530] XXVI. It denies each and every allegation contained in paragraphs 33 and 34 of the complaint.

XXVII. It denies each and every allegation contained in paragraph 40 of the complaint.

Answer.

XXVIII. It is without any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the complaint.

XXIX. It is without any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the complaint, except that it denies each and every allegation therein contained insofar as the same refers or relates to this defendant.

SECOND DEFENSE

XXX. The First, Second, Third and Fifth alleged causes of action set forth in the complaint each fails to state a claim against this defendant upon which relief can be granted.

WHEREFORE, defendant, The Colorado Fuel and Iron Corporation, demands judgment dismissing the First, Second, Third and Fifth alleged causes of action set forth in the complaint, together with the costs and disbursements of this action.

RATHBONE, PERRY, KELLEY & DRYE,

By FRANCIS S. BENSEL
a member of said firm
Attorneys for Defendant,
The Colorado Fuel and
Corporation,
Office and P. O. Address:
No. 70 Broadway,
Borough of Manhattan,
New York City.

Notice to Amend.

[1450]

Sirs:

Please take notice that, upon the opening of the trial of this action, defendant The Colorado Fuel and Iron Corporation will move to amend its answer herein by adding thereto the following:

Third Defense

XXXI. The alleged claims set forth in the First, Second, Third and Fifth alleged causes of action contained in the complaint arose out of matters occurring, if at all, in the State of Louisiana in or about September, 1948, at which time the same accrued, if at all, in favor of plaintiffs, non-residents of the State of New York.

XXXII. This action was commenced on October 26, 1950, at which time said alleged claims were, and at all times since have been, prescribed by one year under the [1451] Louisiana statutes, to wit, Articles 3536 and 3537 of the Louisiana Civil Code, then and now in full force and effect.

XXXIII. By reason of the premises and under and by virtue of the provisions of Section 13 of the New York Civil Practice Act, this action, as to each of said alleged

claims, was commenced after the expiration of the time limited by law for bringing an action thereon.

Dated: January 6, 1955.

Yours, etc.,

KELLEY, DRYE, NEWHALL & MAGINNES,

By LEONARD A. BLUE,
a member of said firm
Attorneys for Defendant,
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New York 5, N. Y.

Trial Minutes.

* * *

[121] CHARLES J. CONLON, called as a witness in behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination by Mr. Dunn:

Q. Mr. Conlon, what is your occupation? A. I am engaged as a foreign freight forwarder doing business under the name of Shippers Export Service Company, which I have—

Q. Where is your office? A. 368 Broadway, New York City.

* * *

[124] Q. Were you engaged in that business in 1948? A. Yes, sir.

Q. Do you recall the Maritime strike of 1948 that affected the West Coast and East Coast? A. Yes, sir.

Q. Were you in business at that time and during that period of time? A. Yes.

* * *

[127] By the Court:

Q. In your conversations with various persons did you have any difficulty arranging for shipments [128] from Gulf ports to ports in India during the month of June, 1948? A. Offhand I would have to say that I don't recall any.

Q. During the month of July, 1948 did you send out shipments and were you able to secure cargo space for shipments going from the Gulf ports to ports in India? A. Well, that again I would have to look into my records to indicate whether we had such shipments or not.

Q. With reference to August 1948, what was the condition? A. Well, we had no difficulty in making bookings.

Charles J. Conlon—For Plaintiffs—Direct.

Q. Did you forward shipments during August 1948 from Gulf ports destined to ports in India? A. Well, we may have. I would have to look into the files to find out.

Q. You don't know? A. Not offhand, no, without looking into the files.

Q. In September 1948 did you have any difficulty in securing cargo space for shipments from Gulf ports to ports of India? [129] A. None that I know of, but, as I said, I will have to look into the records to verify it.

• • •

[135] The Court: I think the point that was made by the defendant Colorado was that they did not know that the vessel was manned by a west coast crew, that is, that the crew of the Hawaiian were members of the West Coast Maritime Union which had not settled with the ship operators.

Mr. Dunn: That is the same as saying that they did not know the owner of the vessel.

Mr. Bensel: No.

The Court: No, there is a distinct difference, counsel.

Were you concerned with the flag of registry or were you concerned with the flag of the charterer and operator of the vessel?

The Witness: Well, I can answer that: We were concerned with the flag of the vessel that you were going to ship your goods on.

The Court: Were you at all concerned or was the industry concerned with the operator of the vessel or the one who had the vessel under charter?

The Witness: Yes, sir.

By Mr. Dunn:

Q. Did you have to know both at the inception of your duties? A. No, because in some cases, if it is [136] a

chartered vessel you wouldn't know who the ownership was.

The Court: And you made no inquiry of it?

The Witness: Ordinarily not.

The Court: Suppose you had arranged a shipment and cargo space on one of the Isthmian Line ships—you have done that, haven't you?

The Witness: Yes, sir.

The Court: Your agreement would be made solely with the Isthmian Line?

The Witness: That's right.

The Court: And you would be told what particular vessel your cargo space was on, is that correct?

The Witness: That's right.

The Court: You would not be concerned, would you, as to whether or not the ownership of the vessel itself was Isthmian or anybody else, would you, as long as Isthmian represented to you that they had a charter of the vessel?

The Witness: No. In an instance like that you would know the ownership because certain other phases of the industry comes in, such as insurance, and you find out the rating of the vessel, and in doing so you find out who is the actual owner of the [137] vessel.

* * *

Cross Examination by Mr. Bensel:

* * *

[139] Q. Now, it is the custom and practice of freight forwarders to make these freight engagement arrangements well in advance of the contemplated shipment, is it not? A. That's right.

Q. And that is especially true, is it not, in the case of considerable bulk of merchandise? A. That is true.

Charles J. Conlon—For Plaintiffs—Cross.

Q. As distinguished from a small shipment? A. That is true.

Q. In the case of a small shipment, you can place it very quickly and easily? A. That's right.

Q. Have you ever had occasion to arrange for the [140] trans-shipment by ocean voyage of caustic soda? A. Yes.

Q. In substantial quantities? A. Yes.

Q. Such as a thousand or two thousand tons? A. Probably not all at one time, but on an average—

Q. I am talking about one shipment. A. Not one shipment.

Q. How large was the shipment or shipments that you were concerned with of caustic soda? A. Anywheres from three to five hundred tons at one time.

Q. That is a difficult cargo to arrange for, isn't it? A. Yes, very difficult.

Q. Do you know why? A. Why, certainly.

Q. Tell us why. A. Because the soda eats away the drums through bad handling and stevedores don't like to handle it and neither does the shipping company.

• • •

[143] Q. If you were commissioned by a customer to arrange for shipment of a thousand or two thousand tons of caustic soda from New Orleans to Bombay, you would set about to make those arrangements at as early a date as possible, would you not? A. As soon as you found out about it and you got the contract.

Q. It would take a considerable period of time to make those arrangements, would it not, in the normal course of your business? A. Well, it all depended on the availability of the steamer.

Q. But you would set about as soon as possible to make those arrangements? A. As soon as you got your contract or information as to the nature of the tonnage and

all that, it would be your duty to set it up immediately so that it could move.

Q. As much as two or three months in advance, if you have the information? A. Usually cargo of that nature you would have to have that much time.

• • •

[145] Q. Prior to September 1, 1948, did you on behalf of customers make freight engagement arrangements for ocean transported merchandise? A. Yes.

Q. For sailings scheduled after the first of September? A. Yes.

Q. In other words, during this period of June, [146] July, August of 1948, you as freight forwarder acting on behalf of your customers continued to make the usual freight engagement contracts for future shipments? A. Right.

Q. Out of the Port of New York, out of other East Coast ports and out of Gulf ports, isn't that correct? A. Yes, that's right.

Q. Even though, as you say, you kept abreast and had knowledge of this threatened strike? A. Yes.

The Court: You say that it was difficult to arrange for cargo space for the shipment of caustic soda; is that your testimony?

The Witness: That's right.

The Court: Had you ever been refused cargo space by a vessel where cargo space was available because it was disclosed that the shipment was a shipment of caustic soda?

The Witness: Not on that basis, no.

Mr. Bensel: Not on what?

The Witness: Not on that basis.

The Court: What prompted you to say that it was difficult to arrange for cargo space for a shipment of caustic soda? What was difficult about it?

Charles J. Conlon—For Plaintiffs—Cross.

[147] The Witness: Well, the previous question, your Honor—

The Court: No, never mind about the previous question. What was difficult about arranging for cargo space for a shipment of caustic soda?

The Witness: At that time there was a lot of caustic soda being shipped and there were a lot of bookings made, and the steamship companies would limit themselves to a set tonnage that they could carry on that particular vessel. When that limit was reached they more or less cut down on that item, unless you could prevail upon them that in the event there was such space available they would take it.

The Court: Was that because caustic soda required special stowage in special portions of the ship?

The Witness: Yes, sir. It requires special stowage. They know what they can handle on each vessel and that is how they limit themselves.

By Mr. Bensel:

* * *

[148] Q. So that your answer is that they are reluctant to carry caustic soda or to book space for it? A. That's right, they are reluctant.

Q. And that was true in 1948 and prior to that date? A. That's right.

Q. You also said that stevedores are reluctant to handle the merchandise? A. That's right.

Q. Why? A. As I mentioned before, I mean, they can get burned from it, if the drums aren't in first-class condition. They consider it bad handling and they get extra pay.

[149] Q. If you can project yourself back to July and August of 1948, you testified that you were engaged in practically daily conversation with others in the shipping industry, and I suppose you talked at that time about the possibility of a National Maritime strike, is that right? A. That's right.

Q. Because of its impact or possible impact on your business? A. That's right.

Q. Did you know or learn at that time that negotiations were under way for settlement? A. Yes.

Q. And if you can project yourself back to that period, is it your recollection that you and the ones you spoke to were hopeful that a settlement would be effected? A. We were optimistic.

Q. You were optimistic all through that period right down to the date when the Pacific Coast strike actually commenced, isn't that so? A. That's right.

. . . .

[151] The Court: Do you know what the difference is between a voyage charter and a time charter?

The Witness: Yes, I know, a general knowledge of what a time charter and a voyage charter is.

Q. You say that you also inquire whether they are putting this boat into their own service, is that right? A. That's right.

Q. What do you mean by that? A. In their own regular run of vessels; in [152] other words the port that they usually serve.

Q. Do you inquire as to what type of charter it is, whether it is a bareboat charter of a time charter? A. Not necessarily, no.

Q. Do you ever make an inquiry of that type, as to the type of charter party between the parties, whether it is time or bareboat? A. No.

Q. Do you know what a bareboat charter is? A. Yes.

Q. What is it? What is a bareboat charter? A. A what?

Q. A bareboat charter. A. No, I don't know.

Q. You don't know? A. No.

Q. Do you inquire when you make these inquiries as to whose crew is operating the ship, that is, whether the owner's or the charterer's? A. More or less, if you know the owner of the boat, you know whose crew it is because they retain the same crew.

Q. Is that your understanding? A. Generally, yes.

Q. You just assume that, is that right, that the owner keeps his own crew aboard? [153] A. Well, on a voyage—

Q. You don't claim to know all the details and ramifications as to whose crew is aboard whose ship as between the owner and the charterer? A. No.

Q. You don't go into those details, do you? A. Generally we would know, as I said, if it is taken from another company, that company usually retains the crew.

Q. You just assume that, don't you? A. Yes.

Q. You don't ask anybody? A. No.

* * *

[154] Cross Examination by Mr. Scott:

* * *

[156] Q. You said something about information you had about an injunction under the Taft-Hartley Act in 1948. A. The information we had was generally known that there was going to be an injunction served to prevent the strike.

Q. That was general knowledge among the shipping agents and forwarders, wasn't it? A. That's right.

Q. And you went on with business as usual? A. That's right.

Charles J. Conlon—For Plaintiffs—Re-cross.
Cyril F. Powers—For Plaintiffs—Cross.

Q. You didn't make any changes in your business? A. No, we continued right along.

Q. And you didn't make any prophecies as to what would happen? A. We couldn't.

Q. You didn't know, did you? A. That's right.

Q. You didn't know whether it would be settled [157] or whether there would later be another strike? A. That's right.

Q. Did you know of anybody that did know? A. No, sir.

Q. In August of 1948? A. No, sir.

Q. You went on with business as usual? A. Yes, sir.

Q. And so did the other shipping people you knew? A. That's right.

* * *

[159] Re-cross Examination by Mr. Bensel:

* * *

[160] Q. But as you said to Mr. Scott a minute ago, in July and August business went on as usual? A. That's right.

Q. You didn't hold back any shipments because of any concern of a possible strike? A. No, sir.

* * *

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[174] CYRIL F. POWERS, called as a witness by plaintiffs, being first duly sworn, testified as follows:

* * *

[188] Cross Examination by Mr. Bensel:

Q. Mr. Powers, you have in effect testified here to the matters set forth in this letter that you wrote to your counsel dated September 2, 1954? A. Yes, sir.

Cyril F. Powers—For Plaintiffs—Cross.

Q. You remember that letter? A. Yes, sir.

Q. You refer there to certain movements of a ship known as the SS. Jane G. Swisshelm? A. Yes, sir.

Q. Between July 29th and September 3, 1948? A. Yes, sir.

Q. Now, what was the connection of Isbrandtsen with that boat? A. Bareboat charterers.

Q. Bareboat charterers? A. Yes, sir.

Q. When had it been chartered? A. I do not have the date, sir. It was about three voyages earlier, I believe.

Q. Now you testified that pursuant to the provisions of the so-called freight engagement contract that your agent, Hansen & Tidemann, made with Colorado, that there came a time when another vessel was substituted [189] for the SS. Swisshelm? A. Yes, sir.

Q. I think you said that was around the 17th or 18th of August? A. Approximately.

Q. Why was the substitution made? A. Because the Jane G. Swisshelm was not available.

Q. Available where? A. At the Port of New Orleans or in the vicinity.

• • •

[191] Q. This freight engagement contract with Colorado contains at the bottom portion of it a lot of small print and frankly my eyesight isn't good enough to catch it, particularly on a photostat, it is so small.

The Court: I will take my glasses off and then I can read it.

Q. But without attempting to go through this fine printed matter, it is a fact, is it not, that this is a firm agreement for the carriage of certain freight enumerated? A. Yes.

Mr. Dunn: I object to the question.

Frederick R. Becker, Jr.—For Defendant Colorado Fuel and Iron Corp.—Direct.

[192] The Court: Objection sustained. What it is is for me to say. You may ask him whether it is known in the trade as a commitment.

Mr. Bensel: Thank you, your Honor.

Q. Are these freight engagement contracts so-called understood and recognized in the trade as firm and binding? A. Subject to their terms.

Q. Subject to their terms? A. Yes.

Q. To wit, the right of the steamship company to substitute a vessel? A. And whatever printed terms are in the contract.

* * *

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[213] FREDERICK R. BECKER, Jr., called as a witness in behalf of Colorado Fuel and Iron Corporation, having been first duly sworn, testified as follows:

Direct Examination by Mr. Bensel:

Q. Mr. Becker, where do you reside? A. In New Orleans, Louisiana.

Q. Are you connected with the Farrell Shipping Company? A. Yes, I am.

Q. In what capacity? A. As secretary-treasurer.

Q. And what is the business of Farrell Shipping Company? A. Freight brokerage and forwarding.

* * *

[214] Q. How long have you been connected with the Farrell Shipping Company? A. Since November, 1932.

* * *

Q. And one of your customers is Colorado Fuel and Iron? A. Yes.

* * *

Frederick R. Becker, Jr.—For Defendant Colorado Fuel and Iron Corp.—Direct.

[215] Q. Did there come a time in the summer of 1948 when your firm was requested by Colorado to book certain space for a shipment of caustic soda? A. Yes.

Q. To India? A. To Bombay, India.

Q. After you received that request did you set out to make arrangements for such a cargo to be shipped? A. That is correct. We canvassed the various lines in an effort to procure space.

• • •

Q. When you received this request, did you experience any difficulty in locating space?

• • •

[216] (Record read)

A. Yes, we did.

Q. Will you explain that? A. Well, space was very limited at that time to Indian ports. There was a very large demand for all types of cargoes and caustic soda is always a commodity that is difficult to book due to the nature of the material.

[217] Q. With whom did you make the arrangements for space for this merchandise? A. Well, we were finally successful in getting space from Isbrandtsen Steamship Company through their agents, Hansen & Tidemann.

Q. In New Orleans? A. Yes.

Q. And did you, on behalf of Colorado, enter into a freight engagement contract? A. We did.

Mr. Bensel: Your Honor, that has been offered in evidence and I am not going to take any time with that.

Q. That was on July 29th, wasn't it? A. I think that's correct.

• • •

Frederick R. Becker, Jr.—For Defendant Colorado Fuel and Iron Corp.—Direct.

[219] Q. Mr. Becker, is it and was it in 1948 the custom and practice in the Port of New Orleans for a freight forwarder, a broker, to inquire of the agents of a ship as to the type of charter in force in respect of the boat on which a customer's goods would be shipped?

Mr. Dunn: I object.
The Court: Overruled.

A. No, it is not customary. It has not been and it still is not.

• • • •

[224] Q. Prior to September 3, 1948, did you know that the S.S. Hawaiian was manned by a west coast crew? A. No, I did not.

Q. In these many years of experience that you have had in the freight forwarding business, have you ascertained in connection with the movement of a ship that various members of the crew belonged to different unions? A. No, we do not.

• • • •

Q. Well, did you know that in this country at least that the ship's officers have their own unions? A. Yes.

Q. And the crews have other unions? A. The crews have other unions.

Q. Did there come a time when you learned that the S.S. Hawaiian was strike-bound? A. Yes, we did learn of it.

[225] Q. From whom? A. From Hansen & Tidemann.

Q. When? A. I think it was September 3rd; I am not positive.

Q. Is that the first knowledge you had of it? A. Yes, after it had already occurred we heard of it.

• • • •

Frederick R. Becker, Jr.—For Defendant Colorado Fuel and Iron Corp.—Direct.

[232] Q. Prior to September 3rd had you received any information from any source, newspapers or otherwise, which indicated or reasonably led you to believe that the S.S. Hawaiian would not sail on the [233] 3rd of September? A. No.

Mr. Dunn: I am sorry, I did not get a chance to object to that.

The Court: If you move now to strike out the answer, your motion is denied and you have an exception.

Mr. Dunn: My motion is addressed to the word "reasonably" in the question, which calls for an expert's opinion rather than this witness's state of mind.

The Court: You may cross-examine him on that.

Did you receive any information which would lead you to the belief that the ship was not to sail on the scheduled date?

The Witness: No, sir, I did not.

[234] By the Court:

Q. Did anybody tell you that a strike was about to be declared by the crew aboard that ship? A. No.

Q. Do you know what union the members of that crew belonged to? A. No, sir, I did not.

By Mr. Bensel:

Q. Did you know what union the ship's officers belonged to? A. No, I did not.

Q. Prior to the first part of September, 1948, had your company continued to book space for clients and merchandise for delivery to a ship after September 1?

Mr. Dunn: That is objected to as irrelevant.

The Court: Overruled.

Frederick R. Becker, Jr.—For Defendant Colorado Fuel and Iron Corp.—Cross.

A. Yes, we definitely did. We continued with our bookings right along.

Q. In other words, is it fair to state that your firm and, to your knowledge, other firms similarly situated in New Orleans continued to do business as usual during these summer months of 1948? A. Correct, we continued to book our freight [235] as it is customary to do so.

Q. When you booked this shipment of caustic soda to India, what generally were the shipping conditions in New Orleans? Was it heavy or light? A. Movement was very heavy. Space was very scarce.

Q. Before you contacted Hansen & Tidemann, the agents of Isbrandtsen, did you approach any other line to see whether or not they could take this merchandise? A. Yes, we had, without success.

Q. What was that other line? A. Isthmian Steamship Company.

• • •

[236] Q. After you were advised by Hansen & Tidemann of the strike in connection with this vessel, did you communicate that information to your principal, Colorado? A. I don't recall whether we did it immediately or whether we didn't do it for about a week.

[237] Q. You testified in New Orleans that on the 7th of September you sent a telegram to Colorado advising them that the S.S. Hawaiian was strikebound? A. Then I am sure it is correct.

• • •

[245] Cross Examination by Mr. Scott:

• • •

[250] Q. This booking arrangement for 1000 tons which you made under date of July 29th was amended and extended to include additional tonnage? A. Yes, sir.

Frederick R. Becker, Jr.—For Defendant Colorado Fuel and Iron Corp.—Cross.

Q. At a later date? A. Right.

Q. Was that extension made after the substitution of the Hawaiian for the Swisshelm? A. Yes.

Q. So that at the time the extension was made you had knowledge of the substitution? A. What do you mean by extension? Do you mean the increase to 1500 tons?

Q. Yes, the increase. A. Yes, that's right. As I recall it, the increase was made about two days after advice of the substitution of the S.S. Hawaiian.

• • • •

[251] Q. The letters of credit, the credit arrangements, were not completed in time to get the cargo to New Orleans to make the original date in the booking agreement? A. That's right.

Q. Did you care what kind of a charter this was, whether it was bareboat charter or time charter? A. No, that wouldn't make any difference to us. [252] We are more concerned with the people with whom we are directly dealing, if we are dealing with reputable people.

Q. It made no difference to you whether the crew on the vessel was the crew of the ship's owner or the crew of the ship's charterer? A. Correct.

• • • •

[257] Q. Do you know who owns the S.S. Hawaiian? A. American-Hawaiian Steamship Company.

Q. Did you know that in August 1948? A. No.

Q. When did you first learn about it? A. I believe at the time of the strike. The information probably was available to me by referring to logs but it was just a routine matter and no consideration was given to it at the time.

Q. You mean by that that it made no difference to you? A. No, it made no difference to me.

Frederick R. Becker, Jr.—For Defendant Colorado Fuel and Iron Corp.—Cross.

Q. What is the answer? A. No, it made no difference to me.

The Court: When you say that it made no difference to you, you mean that when you were booking the cargo space it made no difference to you—

[258] The Witness: It made no difference to us who the owner of the ship was. We were doing business with Isbrandtsen.

The Court: And you relied on them as being a reliable company?

The Witness: Yes, sir. I am sorry I can't find any.

* * *

[261] Cross Examination by Mr. Tillinghast:

Q. Mr. Becker, when did you first learn that the Hawaiian was strikebound? A. On September 3rd.

Q. And you promptly informed your principals of that fact? A. No. we did not inform them of it until Septem-
[262] ber 7.

Q. Why did you delay until September 7th in informing them? A. Well, the situation was very unclear on September 3rd as to how long it was going to last. It was a temporary situation and we were trying to see how it would progress, and then, as I recall it, there was a long weekend occasioned by the Labor Day holiday. So it was the 7th of the month before we could get anything definite that the strike was apparently on and going to last.

Q. I show you—

Mr. Bensel: On the record, your Honor, we have checked. September 3rd was the Friday before Labor Day and the 7th was the Tuesday after Labor Day.

Frederick R. Becker, Jr.—For Defendant Colorado Fuel and Iron Corp.—Re-direct.

The Court: The Court will take judicial notice of that.

• • •

[286] Re-direct Examination by Mr. Bensel:

Q. When the substitution of the Hawaiian for the Swisshelm was made, Mr. Becker, was the date of shipside delivery changed? A. I believe it was.

• • •

[287] Q. Referring to the affreightment agreement marked in evidence here, what was the period of shipside delivery provided for? A. August 19th through August 25th. Mr. Bensel, here is a telegram on August 13th where we extended the delivery date until August 31st, and, as I recall it, there was a later one extending it to September 2nd.

• • •

[288] Q. I show you a document and see if that will refresh your recollection when you were told that the S. S. Hawaiian was due to arrive in New Oreleans. A. Yes.

Q. When? A. On August 28th we were told that the vessel expects to arrive at New Orleans on Tuesday, August 31st.

• • •

Q. Prior to September 3rd, regardless of whether American Hawaiian or Isbrandtsen had a crew aboard the ship, were you in a position to tell whether the strike would or would not occur? A. No, sir.

• • •

Ward Wire—For Defendant Colorado Fuel and Iron Corp.—Direct.

[292] WARD WIRE, called as a witness in behalf of the defendant Colorado Fuel and Iron Corporation, having been first duly sworn, testified as follows:

Direct Examination by Mr. Bensel:

* * *

[293] Q. In connection with this shipment of caustic soda it originated in Ladora, Colorado, did it not? A. Yes.

Q. That is where your plant is? A. Well, that is where that particular plant is.

Q. Now, when did that caustic soda shipment start moving out of Ladora? A. I think about August 20th, and it was all shipped in a few days.

Q. It was all shipped in a few days? A. Yes, sir.

* * *

[294] Q. The evidence disclosed in this record is that Farrell Shipping sent to Colorado at Denver the ocean bills of lading. A. Yes, sir.

* * *

[295] Q. After they were received by Colorado, what was done with them? A. After they were received in our office of the Colorado, specifically in our export division, they are sent to the treasurer to draw drafts in accordance with the letters of credit.

Q. In other words, you have got to draw a draft first? A. Yes.

Q. In this case they were sent on from the treasurer's office in Colorado to the bank here in New York? A. The National City Bank here.

Q. When did you first hear about a strike involving this shipment? A. September—late September 7th or September 8th.

Ward Wire—For Defendant Colorado Fuel and Iron Corp.—Direct.

Q. When you received this telegram, which was marked here this morning as Exhibit C from Farrell, is that right? A. That's right; that's my first knowledge.

* * *

[296] Q. I show you Defendants' Exhibit D. That was a letter received in your office— A. Yes, sir. There is my notation on it referring it to the treasurer and the note that I read the letter at the time.

Q. And after the receipt of that letter, Exhibit D, was a copy of it sent to the export office of Colorado here in New York? A. Yes, sir.

Q. When was the copy sent? A. I don't know the date, but immediately after receiving the letter.

Q. I show you this document and see if that refreshes your recollection. A. That is my copy of my communication.

Q. Forwarding a copy of this letter, Exhibit D? A. Yes.

[297] Q. You sent a copy of this letter to the New York export office under date of September 15th, is that right? A. If that is the date, yes.

Q. Well, look at that and tell me if that is correct. A. (After examining) Yes, sir.

Q. Prior to September 3rd or September 7th did you know what kind of a crew was aboard the S.S. Hawaiian? A. I knew nothing about the crew or the charter or anything else. All I knew I had confirmed booking for a certain tonnage on the boat.

Q. Was all of the caustic soda that you shipped by rail from Ladora, Colorado, put aboard the S.S. Hawaiian? A. It was.

* * *

Siguard E. Simpson, Jr.—For Defendant Isbrandtsen Company, Inc.—Re-cross.

[317] MATTHEW S. CRINKLEY, called as a witness by defendant Isbrandtsen Company, Inc., being first duly sworn, testified as follows:

* * *

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[349] SIGUARD E. SIMPSON, JR., called as a witness by defendant Isbrandtsen Company, Inc., being first duly sworn, testified as follows:

* * *

[375] Re-cross Examination by Mr. Dunn:

* * *

[388] By the Court:

Q. After you received word of a strike you went over to the vessel, you said. A. That's right.

Q. What time did you get there? A. It takes about 45 minutes to get over there. That is on the other side of the river, sir.

[389] Q. Were the winches working when you got there? A. No, sir, everything was completely quiet, all of the longshoremen gone, everybody gone.

Q. How long did you stay there? A. Oh, possibly an hour.

Q. In that time was there any cargo taken aboard? A. No, sir.

Q. Was the ship still tied to the wharf? A. Yes, sir.

Q. Did you notice whether there was any cargo on the wharf? A. Yes, sir.

Q. Did you notice what that cargo was? A. Yes, sir.

Q. Tell us what you saw on the wharf. A. The trucks that were still remaining on the wharf, and I did know that all the caustic soda—

Plaintiffs' Exhibit 1 (In Part).

Q. Tell us what you saw on the wharf. A. I saw the vehicles that were remaining on the wharf.

Q. What else? A. That's all, sir.

Q. Did you see any drums of caustic soda on the wharf? A. No, sir.

The Court: All right.

Plaintiffs' Exhibit 1 (In Part).

(Stipulation)

[972]

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for the respective parties hereto that:

1. The documents which are attached hereto as "schedules" with alphabetical designation are hereby admitted to be true and correct copies of the documents respectively designated and described below;

• • •

3. Any facts stated below with respect to any described document are also deemed to be admitted for all purposes in this action;

• • •

[973] 6. The said documents are as follows:

• • •

"SCHEDULE C": Cablegram sent by said National City Bank, New York Branch, to said National City Bank, Bombay Branch, on August 4, 1948 at the request of The Colorado Fuel and Iron Corporation.

• • •

Plaintiffs' Exhibit 1 (In Part).
Stipulation.

"SCHEDULE E": Cablegram sent by said National City Bank, New York Branch, to said National City Bank, Bombay Branch, on August 5, 1948, at the request of The Colorado Fuel and Iron Corporation, the contents of which were communicated to plaintiffs, and the phrase "without responsibility" being admitted to mean "without responsibility to The National City Bank of New York."

"SCHEDULE F": Cablegram sent by said National City Bank, Bombay Branch, to said National City Bank, New York Branch, on [974] August 6, 1948, the contents of which were communicated to The Colorado Fuel and Iron Corporation and the phrase "Mulkraj regrets" therein contained being admitted by plaintiffs to be true.

* * *

[975] "SCHEDULE Q": Cablegram from Laxmansons, Lucknow, to W. A. Bartle care Colorado Fuel and Iron Corporation, 1616 Eye Street, Washington, D. C. sent and received August 11, 1948.

* * *

"SCHEDULE U": Cablegram from Laxmansons, Lucknow, to W. A. Bartle care Colorado Fuel and Iron Corporation, 1618 Eye Street, Washington, D. C., sent and received August 12, 1948.

* * *

[976] "SCHEDULE W": Cablegram from Colorado Fuel and Iron Corporation, New York, to Mulkraj Brothers & Badhwar care of Citibank, Bombay, sent August 13, 1948 and received August 14, 1948.

"SCHEDULE X": Cablegram from Laxmansons to Colorado Fuel and Iron Corporation, 1616 Eye Street, Washington, D. C., sent August 17, 1948 and received August 18, 1948.

* * *

"SCHEDULE Z": Letter of credit dated August 19, 1948, numbered 86897, issued by The National City Bank of New

Plaintiffs' Exhibit 1 (In Part).
Stipulation.

York at New York in favor of W. A. Bartle care Colorado Fuel and Iron Corporation, 1616 Eye Street, Washington, D. C. for the sum of $239,000.00 for the account of Mulkraj Brothers and Badhwar, Lucknow, and received by Colorado Fuel and Iron Corporation on August 19, 1948.

• • •

"SCHEDULE AC": Amendment dated August 25, 1948 of The National City Bank of New York to its letter of credit No. 86897, changing beneficiary thereof to Colorado Fuel and Iron Corporation instead of W. A. Bartle, which amendment was confirmed in writing as acceptable by W. A. Bartle on August 25, 1948 and by The Colorado Fuel and Iron Corporation on August 27, 1948.

• • •

[977] "SCHEDULE AH": Letter of credit dated August 26, 1948, numbered 87723, issued by The National City Bank of New York at New York in favor of Colorado Fuel and Iron Corporation, 500 Fifth Avenue, New York, N. Y. for the sum of $186,600.00 for the account of R. S. Dass Badhwar, care Mulkraj Brothers and Badhwar, Lucknow and received by Colorado Fuel and Iron Corporation on August 26, 1948.

• • •

[978] "SCHEDULE AM": Sight draft, dated September 7, 1948 and numbered 1838, drawn by The Colorado Fuel and Iron Corporation on Mulkraj Brothers and Badhwar, Lucknow, India, for the sum of $212,743.67 under The National City Bank of New York, Bombay Credit 14937, containing the words "DRAWN AS PER ADVICE CCF 86897, August 19, 1948, and Amendment of August 25, 1948" ("SCHEDULES Z and AC", respectively), the original of which bore the duly authorized signature of the Cashier and the duly authorized countersignature of an officer of The Colorado Fuel and Iron Corporation, and which said

original sight draft, accompanied by the signed invoice in triplicate described in "SCHEDULE AN", by all negotiable copies of the on board ocean bill of lading described in "SCHEDULE AO" and by copies of the certificate of marine insurance in negotiable form described in "SCHEDULE AP", was presented by The Colorado Fuel and Iron Corporation at the office of The National City Bank of New York, 55 Wall Street, New York 15, N. Y., on or about September 7, 1948, and was thereafter honored by said bank by the payment to The Colorado Fuel and Iron Corporation on or about September 13, 1948, of the sum of $212,743.67.

"SCHEDULE AN": Invoice of The Colorado Fuel and Iron Corporation, dated August 25, 1948 and signed by H. C. Crout, Treasurer, to Mulkraj Brothers & Badhwar, Lucknow, India, drawn for the sum of $212,743.67 for 3,217 drums of caustic soda 76% solid (N.Y.&L.) containing 2,239,407 net pounds or 999.73 gross tons.

"SCHEDULE AO": Negotiable on board ocean bill of lading, No. 144 1948, dated at New Orleans, La., September 3, 1948, issued to The Colorado Fuel & Iron Corporation, as shipper, and made out to the order of The National City Bank of New York, New York City, [979] N. Y., or assigns, as consignee, for 3,217 drums of caustic soda 76% solid (N.Y.&L.) marked MULKRAJ LUCKNOW VIA BOMBAY Nos. 1/3217 MADE IN USA, stamped freight prepaid and designating the ship as the S/S Hawaiian the port of loading as New Orleans, Louisiana, and the port of discharge from ship as Bombay, India.

"SCHEDULE AP": Certificate of marine insurance in negotiable form in the amount of $234,018.00, dated September 7, 1948 and bearing No. N 900373, issued by the Insurance Company of North America to Colorado Fuel & Iron Corporation, covering 3,217 New Steel Drums of Caustic

Plaintiffs' Exhibit 1 (In Part).
Stipulation.

Soda Solid, 2,239,407 lbs. net, to be shipped by the vessel Hawaiian, and connecting conveyances, from Ladora, Colorado via New Orleans, Louisiana, to Bombay, India.

"SCHEDULE AQ": Sight draft, dated September 7, 1948 and numbered 1839, drawn by The Colorado Fuel and Iron Corporation on RS Dass Badhwar care Mulkraj Brothers and Badhwar, Lucknow, India, for the sum of $104,631.86 under The National City Bank of New York, Bombay Credit, 15058, containing the words "DRAWN AS PER ADVICE CCF 87723, August 26, 1948" ("SCHEDULE AH"), the original of which bore the duly authorized signature of the Cashier and the duly authorized countersignature of an officer of The Colorado Fuel and Iron Corporation, and which said original sight draft, accompanied by the signed invoice in triplicate described in "SCHEDULE AR", by all negotiable copies of the on board ocean bill of lading described in "SCHEDULE AS" and by copies of the certificate of marine insurance in negotiable form described in "SCHEDULE AT", was presented by The Colorado Fuel and Iron Corporation at the office of The National City Bank of New York, 55 Wall Street, New York 15, N. Y., on or about September 7, 1948, [980] and was thereafter honored by said bank by the payment to The Colorado Fuel and Iron Corporation on or about September 13, 1948, of the sum of $104,631.86.

"SCHEDULE AR": Invoice of The Colorado Fuel and Iron Corporation, dated Auugst 29, 1948 and signed by H. C. Crout, Treasurer, to RS Dass Badhwar care Mulkraj Brothers & Badhwar, Lucknow, India, drawn for the sum of $104,631.86 for 1582 drums of caustic soda 76% solid (N.Y.&L.) containing 1,101,388 net pounds or 491.69 gross tons.

"SCHEDULE AS": Negotiable on board ocean bill of lading No. 145 1948, dated at New Orleans, La., September

Plaintiffs' Exhibit 1 (In Part).
Stipulation.

3, 1948, issued to The Colorado Fuel & Iron Corporation, as shipper, and made out to the order of The National City Bank of New York, New York City, N. Y., or assigns, as consignee, for 1582 drums of caustic soda 76% solid (N.Y.&L.) marked MULKRAJ LUCKNOW VIA BOMBAY Nos. 3218/4799 MADE IN USA, stamped freight prepaid, and designating the ship as the S/S Hawaiian, the port of loading as New Orleans, Louisiana, and the port of discharge from ship as Bombay, India, the multilated portion of which is admitted to be identical to the corresponding unmultilated portion of the ocean bill of lading annexed as "SCHEDULE AO."

"SCHEDULE AT": Certificate of marine insurance in negotiable form in the amount of $115,094.00, dated September 7, 1948 and bearing No. N 900376, issued by the Insurance Company of North America to Colorado Fuel & Iron Corporation, covering 1,582 New Steel Drums of Caustic Soda Solid, 1,101,388 lbs. net, to be shipped by the vessel Hawaiian, and connecting conveyances, from Ladora, Colorado via New Orleans, Louisiana, to Bombay, India.

• • •

[985] Dated, New York, N. Y., November 30, 1950.

DUNN & ZUCKERMAN

By: JAMES F. DUNN
Attorneys for Plaintiffs

RATHBONE, PERRY, KELLEY & DRYE

By: FRANCIS S. BENSEL
Attorneys for Defendant
The Colorado Fuel and Iron Corporation

Plaintiffs' Exhibit 1 (In Part).
Stipulation.

SCHEDULE C.

[988]

REFER YOUR 9 CAUSTIC SODA • • • PLEASE CONTINUE ENDEAVOR AROUSE INTEREST FOR ALL OR PART 4,300 TONS AND CABLE RESULTS.

SCHEDULE E.

[990]

YOUR ELEVEN COLORADO STATE THEIR BEST PRICE CAUSTIC SODA QUALITY EQUAL NINETY-EIGHT PERCENT NOAH SUBJECT TO PRIOR SALE FOR IMMEDIATE ACCEPTANCE IS TEN CENTS PER POUND CIF BOMBAY WITHOUT RESPONSIBILITY.

SCHEDULE F.

[991]

YOUR NINE MULKRAJ REGRETS STOP SO FAR NO OTHER INTEREST CONTACTS SAYING NEW YORK MARKET CENTS 9.50 CIF BOMBAY STOP.

SCHEDULE Q.

[1003]

• • •

CONTINUATION OUR CABLE 9th AUGUST PLEASE DISPATCH CAUSTICSODA BOMBAY INSTEAD CALCUTTA STOP IMPORT LICENSES NUMBERS 416/48 AND 9380/48 TREAT PREVIOUS IMPORT LICENSE GIVEN CANCELLED

• • •

Plaintiffs' Exhibit 1 (In Part).
Stipulation.

SCHEDULE U.

[1007]

. . .

LETTER CREDIT YOUR FAVOUR ESTABLISHED TODAY FOR 239000 DOLLARS AGAINST IMPORT LICENSE NUMBER 9380/48 BALANCE WILL BE ESTABLISHED WITHIN WEEK

. . .

SCHEDULE W.

[1009]

. . .

ADVISE NAME NEWYORK BANK ARRANGING LETTER CREDIT STOP ABSENCE SUCH INSTRUCTIONS MAY DELAY SHIPMENT CABLE REPLY WICKSPEN NEWYORK

. . .

SCHEDULE X.

[1010]

. . .

LETTER CREDIT 2000 TONS CAUSTICSODA ESTABLISHED YOUR FAVOUR THROUGH NATIONAL CITY BANK OF NEWYORK

. . .

Plaintiffs' Exhibit 1 (In Part).
Stipulation.

SCHEDULE Z.

[1012]

THE NATIONAL CITY BANK OF NEW YORK
55 Wall Street
New York 15, N. Y.

Rec'd Aug 19 1948
New York August 19, 1948

Confirmed irrevocable straight credit

WA BARTLE Care COLORADO FUEL AND IRON CORPORATION
1616 Eye Street
Washington D.C.

All drafts drawn must be marked:
Drawn as per advice CCF

86897

Dear Sirs:

We are instructed by The National City Bank of New York, Bombay, India to advise you that they have opened their irrevocable credit in your favor for account of Mulkraj Brothers and Badhwar Lucknow under their credit No. 14937 for a sum or sums not exceeding a total of $239,000.00 (Two Hundred Thirty Nine Thousand Dollars) available by your drafts at sight on Mulkraj Brothers and Badhwar Lucknow for full invoice cost without recourse payable at our office for face amount upon presentation marked drawn under The National City Bank of New York Bombay, Credit 14937. To be accompanied by: Your signed invoice in triplicate certifying merchandise to be of United States origin. Invoices are to include the amount of freight prepaid and may include the amount of insurance premium.

Full set on board ocean bills of lading showing freight prepaid and made out to the order of The National City Bank of New York and/or to order and blank endorsed dated latest October 10, 1948, all negotiable copies required. Through railway bills of lading are unacceptable.

Plaintiffs' Exhibit 1 (In Part).
Stipulation.

Marine insurance policies or certificates of insurance in negotiable form WPA including theft pilferage non-delivery and with customary warehouse to warehouse clause including risk of fire for a period of at least ten days after landing on wharves and/or wharf sheds and/or wharf warehouse at port of destination unless previously warehoused by consignee or party at interest. War risk insurance required. Evidencing shipment of one thousand tons caustic soda from U. S. ports to Bombay in one or more shipments.

Except as otherwise expressly stated herein, this advice is subject to the "Uniform Customs and Practice for Commercial Documentary Credits" (fixed by the Seventh Congress of the International Chamber of Commerce) and to the relative guiding provisions, all as adopted by certain banks and other concerns in the U. S. of A.

The above mentioned correspondent engages with you that all drafts drawn under and in compliance with the terms of this credit will be duly honored on delivery of documents as specified if presented at this office on or before October 25, 1948. We confirm the credit and thereby undertake that all drafts drawn and presented as above specified will be duly honored by us.

Yours very truly,

THE NATIONAL CITY BANK OF NEW YORK
(Illegible)

Stringent Indian imports regulations make it extremely inadvisable to consider shipping more than the quantity specified without having credit amended, even if credit amount is sufficient to cover.

Com. 511 5 Parts Rev. Oct 41
S. C.

AAM/JM

Plaintiffs' Exhibit 1 (In Part).
Stipulation.

SCHEDULE AH.

[1021]

THE NATIONAL CITY BANK OF NEW YORK
55 Wall Street
New York 15, N. Y.

New York August 26, 1948

Confirmed irrevocable straight credit

COLORADO FUEL AND IRON CORPORATION
500 Fifth Avenue
New York, New York

All drafts drawn must be marked:
Drawn as per advice CCF
87723

Dear Sirs:

We are instructed by The National City Bank of New York, Bombay, India to advise you that they have opened their irrevocable credit in your favor for account of RS Dass Badhwar care Mulkraj Brothers and Badhwar Lucknow under their credit No. 15058 for a sum or sums not exceeding a total of $186,600.00 (One Hundred Eighty Six Thousand Six Hundred Dollars) available by your drafts at sight on RS Dass Badhwar care Mulkraj Brothers and Badhwar Lucknow for full invoice cost without recourse payable at our office for face amount upon presentation marked drawn under The National City Bank of New York, Bombay Credit, 15058. To be accompanied by: Your signed invoice in triplicate certifying merchandise to be of United States origin. Invoices are to include the amount of freight prepaid and may include the amount of insurance premium.

Plaintiffs' Exhibit 1 (In Part).
Stipulation.

Full set on board ocean bills of lading showing freight prepaid and made out to the order of The National City Bank of New York and/or to order and blank endorsed, dated latest September 22, 1948, all negotiable copies required. Through railway bills of lading are unacceptable.

Marine insurance policies or certificates of insurance in negotiable form W.P.A. including theft pilferage non-delivery and with customary warehouse to warehouse clause including risk of fire for a period of at least ten days after landing on wharves and/or wharf sheds and/or wharf warehouse at port of destination unless previously warehoused by consignee or party at interest. War risk insurance required. Evidencing shipment of caustic soda from U. S. ports to Bombay in one or more shipments.

Except as otherwise expressly stated herein, this advice is subject to the "Uniform Customs and Practice for Commercial Documentary Credits" (fixed by the Seventh Congress of the International Chamber of Commerce) and to the relative guiding provisions, all as adopted by certain banks and other concerns in the U. S. of A.

The above mentioned correspondent engages with you that all drafts drawn under and in compliance with the terms of this credit will be duly honored on delivery of documents as specified if presented at this office on or before October 7, 1948. We confirm the credit and thereby undertake that all drafts drawn and presented as above specified will be duly honored by us.

Yours very truly,

THE NATIONAL CITY BANK OF NEW YORK
(Illegible).

Com. 511 5 Parts Rev. Oct 41
S.C.

AAM/JM

Plaintiffs' Exhibit 4 (In Part).

(Dalton Deposition)

• • •

(3 [593]) JOHN HANSEN DALTON called by and on behalf of the plaintiffs, being first sworn by a Notary Public, was examined and testified as follows:

• • •

(4 [594]) Cross Examination Mr. Dunn:

• • •

(5 [595]) Q. Prior to the formation of the firm, you have just mentioned, what was your occupation or position? A. Steamship agent.

Q. Were you then with Hansen & Tidemann, Inc.? A. That's correct.

• • •

Q. And what was your position with Hansen & Tidemann, Inc. in 1948? A. I was a vice-president and secretary.

• • •

(77 [667]) Q. And the stevedoring company was acting for the ship? A. For the ship.

Q. Owner or operator? A. That is right.

Q. To your knowledge did Colorado Fuel & Iron Corporation or Farrell Shipping Company give any instructions as to how and when the caustic soda should be loaded aboard the S/S Hawaiian? A. Not at all. To the best of my recollection it would be most extraordinary if something like that happened.

Q. Whether it was extraordinary or not, did it happen in this case to your knowledge? A. I do not recall it happening, to my knowledge.

Q. In other words, the arrangements for the placement of the drums of caustic soda was within the control of either your company or the operator-owner of the ship? A. That is correct.

• • •

Plaintiffs' Exhibit 4 (In Part).

(Smith Deposition)

(111 [701]) ROBERT T. SMITH called by and on behalf of the plaintiffs, being first sworn by a Notary Public, was examined and testified as follows:

Direct Examination Mr. Dunn:

Q. Mr. Smith, what is your present occupation or position? A. I am president of the Standard Stevedoring Company, Inc.

• • •

(112 [702]) Q. Very briefly, would you tell us the function of a stevedoring company in the Maritime Industry? A. Well, the principal function of a stevedoring company is to discharge and/or load vessels with miscellaneous cargoes.

• • •

(131 [721]) Was the loading at Westwego completed in that one operation or was it interrupted in an incomplete state? A. You have reference to all of the cargo to be loaded by the vessel at Westwego Terminals?

(132 [722]) Q. At Westwego only? A. Before shifting to the other berths?

Q. Yes. A. Yes, the loading was interrupted by the walkout of the crew before all of the boxed automobiles were on board.

• • •

Q. What was it that occurred that actually caused you to stop? A. What actually caused us to stop was the ship's steam being turned off.

• • •

Plaintiffs' Exhibit 4 (In Part).
Robert T. Smith—For Plaintiffs—Cross.

(137 [727]) Cross Examination Mr. Bensel:

• • •

(138 [728]) Q. And to the best of your recollection, was the cargo stowed substantially in accordance with that plan? A. I don't recall the captain making any objections to the proposed stowage, that plan that we presented to him.

Q. So, your best recollection is that it was substantially carried through? A. Yes, for the cargo that was loaded, yes, sir.

• • •

Mr. Tillinghast:

• • •

(140 [730]) Q. If the cargo were not on the pier at the time you commenced loading, what would you have done to make sure that there was cargo there and that the loading wouldn't be interrupted by reason of unavailable cargo? A. In the case of the HAWAIIAN, the caustic soda, if I recall, for Bombay, the last port, and it being a heavy cargo, we naturally would stow that in the lower holds for stability reasons and we would designate a certain number of tons to go into each hold. If all the caustic soda was available, we would naturally stow it all in the lower holds first and then come on top of the caustic soda with the boxed automobiles.

• • •

(141 [731]) Q. Did the Farrell Shipping Company have anyone on the pier to make sure this shipment was at ship's side? A. I don't recall and I don't believe that he did; that's not the normal practice.

• • •

(142 [732]) Q. I think the record shows that loading cargo was interrupted by the strike at 10:00 A.M. on September 3? A. Yes.

Plaintiffs' Exhibit 4 (In Part).
Frederick Becker—For Plaintiffs—Direct.

Q. Did you load at that time all of the cargo to be loaded at Westwego? A. Not all of the cargo.

Q. A portion of it remained on the dock? A. That's correct.

Q. All the caustic soda had been loaded? A. That's true.

Q. Did you resume loading at Westwego the balance of the cargo at any time? A. After the strike was over, we, if my memory serves me correctly, completed loading the boxed automobiles which had been left on the wharf.

(Becker Deposition)

(174 [764]) FREDERICK BECKER, JR. called by and on behalf of the Plaintiffs, being first sworn by a Notary Public, was examined and testified as follows:

Direct Examination Mr. Dunn:

* * *

(176 [766]) Q. Do you recall whether you had any difficulty engaging shipping space for that shipment of caustic soda? A. Yes, I remember it quite well. It was extremely difficult at that time to secure freight space and particularly for caustic soda.

* * *

(179 [769]) Q. In trying to find a boat, what did you do? A. On this particular shipment?

Q. Yes. A. Well, as I recall it, we contacted the regular steamship companies operating in the conference to India, which, I believe, at the time, were Isthmian Steamship Company and the Kerr Steamship Company, agents for the Silver Java Line.

Q. Did you make any shipping commitments with Isthmian and/or Kerr? A. No, they had no space at the time for caustic soda.

Plaintiffs' Exhibit 4 (In Part).
Frederick Becker—For Plaintiffs—Direct.

Q. What did you do then? A. To the best of my memory, we then canvassed the market to see what other vessels may be available with other operators of vessels, whether in or out of the conference.

Q. What did you find with respect to Isbrandtsen vessels? A. Well, as I recall it at the time, we contacted Hansen & Tidemann, who was also interested in any large parcel in any direction, as a nucleus of cargo to submit to their principals, Isbrandtsen Steamship Company, and eventually, if my memory is correct and which my file, I am sure, will bear me out, we were offered a booking (180 [770]) or a vessel by the Isbrandtsen Steamship Company through their agent here.

• • •

(186 [776]) Q. Any evidence of the dates on which it was shipped from Ladora? A. Yes, we have copies of bills of lading on various cars indicating the supposed shipping date, at least indicating the date on which the railroad received the cars.

Q. Would you give us those dates, please? A. Well, there are various dates and numerous cars. (Checks files.) I would say that inland ladings have a range of dates from August 20 through August 27, 1948, Ladora, Colorado.

• • •

(189 [779]) Q. What did you do about the additional tonnage over 1,000 tons, for example? A. Again, I will have to study the file. I do not recall the detail of it. (Examines file.) On August 19th we telegraphed the Colorado Fuel & Iron Corporation confirming the total of 1,500 tons to Bombay. There is nothing in the file to indicate when or how the request came to us: possibly by telephone.

• • •

Q. I show you the paper marked Defendants' Exhibit-B

and ask you if that is a typewritten copy of the contract you made at that time? A. That is a true copy of the contract in my possession.

• • •

(194 [784]) Q. What cable are you referring to now? A. I am still referring to this one of August 17th. When we referred to 750 tons each, two steamers, October, we were referring to caustic soda.

Q. Would you read that entire cable into the record?

Mr. Tillinghast: It is a telegram.

A. It is addressed to Colorado Fuel, Mr. Griffith, "OUR WIRE TODAY ISBRANDTSEN NOW ADVISES AMERICAN STEAMER HAWAIIAN LATER SHIP'S SIDE DELIVERY NEW ORLEANS SEPTEMBER 2ND. WILL LOAD YOUR THOUSAND TONS CAUSTIC SODA BOMBAY.

TELEGRAPH IF DELIVERY WILL BE ACCOMPLISHED STOP ALSO TELEGRAPH IF YOU ACCEPT ISTHMIAN LINES OFFER TWO STEAMERS 750 TONS EACH DURING OCTOBER."

• • •

(202 [792]) Q. Did you arrange the necessary documents for the delivery of the goods from the railroad for boat loading? A. Yes, we prepared delivery orders, had them approved by the steamship company and had them mailed or delivered to the railroad.

• • •

(209 [799]) Cross Examination Mr. Bensel:

• • •

(211 [801]) Q. On direct examination you testified that you sent to Colorado two full receipts of bills of lading

Plaintiffs' Exhibit 4 (In Part).
Frederick Becker—For Plaintiffs—Re cross.

with a letter dated September 1, 1948? A. That is correct.

Q. Will you produce that letter, or a copy of it? A. Very well (producing document).

Mr. Bensel: I ask that this letter be marked for identification, "Defendants' Colorado-I."

(The document referred to was marked "Defendants' Exhibit-I" for identification.)

Q. Referring to this Exhibit-"I" that has just been marked, was that letter mailed on the date that it bears? A. I would say no. The reason I say no is because the bills of lading are not dated until a later date. Therefore, I could not possibly have mailed it on September 1st.

Q. The copies of the bills of lading that have been marked in this case as "Plaintiffs' Exhibit-F and H" bear a date of September 3, 1948? A. That is right.

Q. When did you receive those bills of lading from Hansen & Tidemann? A. On September 3rd, I feel sure.

Q. And when did you send them, with the letter, Exhibit "I"? A. We would have mailed them immediately, the same day.

(212 [802]) Q. To-wit, September 3rd? A. That is right.

Q. Can you explain why the letter bears the date September 1st? A. Yes. In our office we always try to work ahead, and in doing so we often date our letters the date we anticipate the document will be ready for transmittal. We are very busy and we cannot afford to have too large an organization. Therefore, whenever we have an opportunity we work ahead. We customarily try to change the dates, but apparently in some cases it was overlooked.

• • •

(218 [808]) Re-cross Examination Mr. Scott:

• • •

(220 [810]) Q. I believe you stated in your direct ex-

amination that this was the only vessel, the S/S HAWAIIAN, was the only vessel available in which this cargo of caustic soda could be shipped at that time? A. That is correct.

• • •

(221 [811]) Mr. Tillinghast:

• • •

(222 [812]) Q. You stated when you received this order you canvassed the steamship companies and the trade? A. That is right.

Q. To try to obtain space on their vessels? A. Yes, sir.

Q. You also stated that Isthmian Lines and the Silver Line, the Kerr Line, that is, declined to give you space for caustic soda? A. That is speaking from my memory, of course.

• • •

Q. Why didn't they want to carry caustic soda? A. For one thing, shippers of caustic soda were experiencing (223 [813]) extreme difficulty in obtaining ship license for caustic soda; another thing, caustic soda cannot be loaded into a vessel mixed with other certain types of cargoes, for instance, a vessel carrying edibles for obvious reasons.

• • •

Q. Do you know if its caustic nature has anything to do with it? A. No, I don't, but I assume that it would become caustic is very erosive. It will eat; the slightest dampness will cause it to start eating through its containers.

Q. Its own containers. Isn't that a fact? A. Yes, sir.

• • •

Plaintiffs' Exhibit 4 (In Part).

(Defendants' Exhibit B)

[880]

HANSEN & TIDEMANN, INC.
Steamship Agents - Ship Brokers
U. S. Gulf Ports

Contract No. NO-25

COLORADO FUEL & IRON CORPORATION New Orleans, Louisiana, July 29, 1948

c/o FARRELL SHIPPING COMPANY

This confirms engagement, made this day, of freight room, as follows ONE THOUSAND (1,000) TONS CAUSTIC SODA IN DRUMS

From the port of NEW ORLEANS, LOUISIANA to the port of BOMBAY, INDIA at the rate of $21.50 per 2,240# Freight Prepaid

Shipment per American SS JANE G. SWISSHELM or other A-1 vessel.

To be delivered as required by Hansen & Tidemann, Inc. AUGUST 19-25, 1948

• • •

ISBRANDTSEN COMPANY, INC
HANSEN & TIDEMANN, INC., AGENTS.

By (Original signed) S. E. SIMPSON

.....
Shipper.

Broker: FARRELL SHIPPING COMPANY

Plaintiffs' Exhibit 4 (In Part).

(Defendants' Exhibit I)

[889]

September 1, 1948

The Colorado Fuel and Iron Co.
P. O. Box 1920
Denver, Colorado

Attention: Miss Kneiszel

Gentlemen:

As per your instructions we herewith attach two full sets of bills of lading covering caustic soda loaded aboard the S. S. "HAWAIIAN" destined Bombay.

We also attach bill for our forwarding fee, for which please let us have check at your convenience.

Very truly yours,

FARRELL SHIPPING COMPANY, INC.

FRB:W

Plaintiffs' Exhibit 4 (In Part).

(14 [907]) *New Orleans Item, Tuesday, June 15, 1948—Page 15*

EDITORIAL COLUMN HEAD: STRIKE DEFERRED

In view of the recent widespread wage agreements in the nation's basic industries, disruption of our country's maritime commerce by a shipping strike would have been nothing short of calamitous.

• • •

Thus it is especially encouraging to reflect that once more the T-H Law has served to ward off an industrial deterioration that might have proved disastrous.

• • •

It must be remembered, however, that actually a (15 [908]) general port strike is now merely deferred. An injunction was issued by a federal court in New York at the request of a presidential fact-finding board. Under its terms, the threatened walk-out of maritime union workers has been forbidden for eighty days.

But in most cases of such work-stoppages, an agreement is struck before eighty days elapse. The exceptions have been few and far between. Hence it is more likely that before September 2—which happens to be Labor Day, incidentally—all disputes between the shipping industry and the six maritime unions can be composed through the orderly processes of discussion.

• • •

Plaintiffs' Exhibit 4 (In Part).

(Transcript of Newspaper Stories Re 1948 Maritime Strike)

(44 [937]) *New Orleans States, August 18, 1948—Page 3*

Column Head: AVERT STRIKE THREAT IN PACT WITH SEAMEN

(The AP)

New York—A threatened strike of 60,000 CIO seamen was staved off early today by an agreement with 42 Atlantic and Gulf Coast shipping companies for retention of "Union hiring halls" and for pay increases.

• • •

The agreement—subject to ratification by the union membership—was reached at 2:15 A. M. EST, after an 11-hour session of negotiating by committees of the NMU and the ship owners.

• • •

Plaintiffs' Exhibit 6 (In Part).

(Morgan Deposition)

(3 [1196]) LOUIS B. MORGAN, residing at 10 W. Maple Drive, New Hyde Park, New York, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dunn:

Q. Mr. Morgan, what is your present position with Colorado Fuel and Iron Corporation? A. My present position is that of export manager.

Q. How long have you been with Colorado Fuel? A. I would say about seventeen or eighteen years.

Q. What was your position with them in 1948? A. My position in 1948, prior to October 21, was that of administrative assistant.

Plaintiffs' Exhibit 6 (In Part).
Louis B. Morgan—For Plaintiffs—Direct.

Q. You were administrative assistant to whom, and in what department? A. The Export Department; and I was administrative assistant to the export manager.

Q. What was his name, please? A. Mr. Matt Rosse.

Q. Mr. Rosse is now deceased? A. That is correct.

• • •

(12 [1205]) Q. Did you have anything whatever to do with a caustic soda sale to an Indian firm known as Mulkraj Brothers and Badhwar in the summer of 1948? A. I didn't have anything to do with the actual sale of it.

Q. What part of it did you work on, if any? A. To the best of my recollection, I was brought into (13 [1206]) the picture in about late August 1948, just prior to Matt Rosse, the export manager, going on vacation, and, in the interest of reviewing the letter of credit, taking care of other matters pertaining to that transaction, I took over for the two weeks that he was away as a clearing house, you might say, as a kind of intermediary.

• • •

A. Well, in reviewing my files, it would appear that I got into it after August 20, 1948.

Q. After August 20 and prior to what date? In other words, state the date as nearly as you can. (14 [1207]) A. The 25th.

Q. Sometime between the 20th and the 25th; is that your best recollection? A. That is right.

• • •

(28 [1221]) Q. Did you know the vessel on which the shipment was to proceed? A. No, I did not know until some time later. I don't know what time we are talking about

Plaintiffs' Exhibit 6 (In Part).
Louis B. Morgan—For Plaintiffs—Cross.

here, because in the beginning, I did not know, when I took it over. As things progressed and as the insurance company brought up certain questions, the name of the vessel became known to me at that time.

Q. Did you know the ownership of that vessel? A. No, sir.

Q. Did you at any time during this period have knowledge of any maritime strike or threatened strike in the United States? A. To the best of my recollection, I did not.

Q. Did anybody tell you about any strike situation that might affect shipments? A. No, sir, not to my recollection.

Q. Did you learn anything about any such strike situation from your examination of the files? A. In reading over the files, I did, yes. I knew about the strike situation after it had occurred, obviously, it became common knowledge at that time.

* * *

(40 [1233]) Cross-Examination by Mr. Tillinghast:

* * *

(51 [1244]) Q. You stated that the strike had been in progress when you first learned about it. Do you know how long it had been in progress? A. I received a letter from—I or Matt Rosse—received a letter from the traffic department, which I believe was dated September 7, informing us that a strike was in progress.

* * *

(52 [1245]) Q. Did you insure this shipment under a master policy, an open policy? A. That was covered under, I believe it is, a master policy, yes.

* * *

Plaintiffs' Exhibit 6 (In Part).
Louis B. Morgan—For Plaintiffs—Cross.

(53 [1246]) Q. When this shipment was being discussed with your Denver office, did you receive any communications forecasting the possibility that there might be a strike on the ocean steamships? A. I did not.

Q. Does your file contain any notice to that effect? A. My file contains no notice to the effect of any forthcoming or possible strike.

(54 [1247]) Q. And you state that you did not of your own knowledge know of any? A. I did not know of any pending strike at all.

Mr. Bensel: He indicated that he learned about the strike on the 7th, and it is apparent he didn't know it then.

Do you want to correct your answer?

The Witness: Yes, I would like to correct the answer as to when I learned that this ship was strike-bound.

I mentioned that the date was September 7th, but that is the date, according to the file, that the traffic department knew about it in Denver, and that is the date I got confused in my mind when you asked the question.

I didn't know about it until after that date, probably the 13th, at the earliest.

* * *

Defendant Colorado's Exhibit A.

FARRELL SHIPPING COMPANY
Established May 15, 1913—
Incorporated April 26, 1919

Export Freight Brokers
Forwarders
Whitney Bldg.

New Orleans 12 U.S.A.

Fernin F. Farrell, President
Richard E. Farrell, Vice-Prest.
Alfred M. Farrell, Manager

Telephones
Raymond 8424-25-26

July 29, 1948

AIRMAIL
The Colorado Fuel & Iron Corp.,
P.O. Box 1920,
Denver, Colorado

ATT: Mr. Wm. DeBoer, T. M.
FORWARDING: 25—BOMBAY

Gentlemen:

As per our wire today we confirm booking with Hansen-Tidemann, Inc., 1,000 tons caustic soda in drums for export to Bombay, India where delivery at New Orleans is required between August 19th/27th. for the ss JANE G. SWISSHELM or A-1 substitute steamer, which vessel is scheduled to sail from New Orleans August 28th/30th. where the Conference Rate of $21.50 per 224#, freight prepaid will apply.

We note from your letter of the 26th. that this material will originate at Ladora, Colorado at the rate of approximately three cars per day where the first consignment

Defendant Colorado's Exhibit A.

should reach here by August 15th., therefore with the free time allowed after the cars arrive we will experience no difficulties in effecting delivery to steamer's dock, thereby avoiding demurrage.

As a matter of information the Isthmian Line advertised three sailings to Bombay during August, and while their September schedule has not yet been fixed they announce the s/s William H. Allen about the middle of September, however they inform us that due to flour going aboard all of their sailings that they are unable to accept caustic soda.

We can assure you that the Trade welcomes Hansen & Tidemann berthing the above steamer to India and hope that it will be a regular service thereafter as Isthmian is the only one operating at the present time from here to India, however, we do take pleasure in informing you that the Strachan Shipping Co. are Agents for the Java-Pacific Lines and today they have announced that the latter will have the United States and Canadian representative of the Nedlloyd Line operating vessels of Dutch Register that will start a service from the Gulf during October to the Mediterranean and Suez Canal, as well as to the West Coast of India and Karachi, also the Persian Gulf.

We now understand that you will start selling caustic soda that you are producing direct to the European Buyers and needless to say whatever shipments that are entrusted to our care will at all times have our best attention.

We now await shipping instructions covering the above 1,000 tons.

Yours very truly,

FARRELL SHIPPING CO. INC.
A. M. FARRELL

AMF:A

Defendant Colorado's Exhibit B.

THE COLORADO FUEL AND IRON CORPORATION

Denver 1, Colorado

Ward Wire
General Traffic Manager

Wm. De Boer
Traffic Manager

K. B. Griffith
Assistant Traffic Manager

September 10, 1948

Farrell Shipping Company
Whitney Building
New Orleans, Louisiana

Gentlemen:

Referring to your telegram of September 7th concerning SS HAWAIIAN being delay . in New Orleans by strike of the west coast crew who re picketing this vessel.

As a matter of curiosity I am unable to understand why this vessel is being picketed and will appreciate your enlightening me on the subject.

Very truly yours,

KBG

Defendant Colorado's Exhibit C.

(Format omitted)

VZ086 23 DL COLLECT=WH NEW ORLEANS LA SEP 7 218P=

THE COLORADO FUEL AND IRON CORP.
GRIFFITH=

SS HAWAIIAN DELAYED BY STRIKE OF WEST COAST CREW WHO PICKETING THIS VESSEL THEREFORE CANNOT COMPLETE LOADING WILL ADVISE SOON AS RESUME LOADING=

FARRELL SHIPPING CO INC=220P.

Defendant Colorado's Exhibit D.

FARRELL SHIPPING COMPANY

Established May 15, 1913—Incorporated April 26, 1919

FERNIN F. FARRELL, President
RICHARD E. FARRELL, Vice-Prest.
ALFRED M. FARRELL, Manager

TELEPHONES
RAYMOND 8424-25-26

EXPORT FREIGHT BROKERS
FORWARDERS
Whitney Bldg.
New Orleans 12, U.S.A.

September 13, 1948

AIRMAIL.

The Colorado Fuel & Iron Corporation
Denver 1
Colorado.

Attention: Mr. K. B. Griffith

Gentlemen:

Your letter of September 10th. has been duly received regarding the status of the SS. "HAWAIIAN".

Defendant Colorado's Exhibit D.

As you are aware, the Maritime Union, operating from the Pacific Coast is striking against the Steamship Lines.

Isbrandtsen Steamship Company chartered the SS. "HAWAIIAN" from a West Coast Line and the crew belongs to one of the West Coast Unions; therefore, when the strike commenced on the Pacific Coast the West Coast crew struck here and picketed the vessel. By that time, the vessel had been in port several days and your caustic soda was loaded; therefore, we were able to secure the Bs/L to cover.

It subsequently developed that all stores and perishable material had to be removed from the vessel, as the crew refused to allow her to sail; or load remaining cargo.

It now looks like this vessel will stay in port until the strike has ended and there is no chance at present of loading additional cargo on her or of removing cargo already on board.

We shall keep this matter before us and wire you in the event that there is a change in the status of this vessel.

Yours very truly,

FARRELL SHIPPING CO., INC.
FRED BECKER, JR.

FB/jm